

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Scott Erickson  
Julie Erickson

NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY

Debtor

Chapter 7, Case No. 04-35290  
-----

TO: Scott Erickson and Julie Erickson, INCLUDING TRUSTEE AND OTHER INTERESTED PARTIES

1. First Franklin Financial Corporation, ("Movant"), a corporation, by its attorneys, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 9:30 a.m. on November 3, 2004, in Courtroom 228A, 316 North Robert Street, St. Paul, MN 55101 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on October 29, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 25, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, FRBP Nos. 5005 and Local Rule 1070-1. This is a core proceeding. The Chapter 7 case was filed on September 9, 2004, and is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001, and is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to the property of Debtor, subject to a mortgage to Movant.

6. Debtor above-named is the owner of certain real property located at 1491 Woodview Avenue East, Eagan, MN 55122, legally described as follows, to-wit:

Lot 3, Block 7 and Lot 2, Block 8, Surrey Heights 2nd Addition, Dakota County, Minnesota

7. The indebtedness of Scott Erickson and Julie Erickson is evidenced by a Promissory Note and Mortgage dated January 9, 2003, filed of record in the Dakota County Recorder's office on May 28, 2004,

and recorded as Document No. 2053738. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A.

8. The Debtor has failed to pay monthly mortgage payments since September 1, 2004, and is in default in the amount of \$ 541.48 together with reasonable attorneys fees and costs incurred pursuant to the note and mortgage. Debtor has failed to make any offer of adequate protection. Accordingly, Movant's interest is inadequately protected.

9. The total amount due under the mortgage and note as of the date of hearing is approximately \$31,300.00.

10. The Debtor has executed a first mortgage in favor of First Franklin Financial Corporation on January 9, 2003, which mortgage was filed of record on May 28, 2003, as Document No. 2053737 in the original amount of \$124,000.00. Upon information and belief, the principal balance of said mortgage is still in that amount.

11. The Debtors have estimated the value of the homestead as \$150,000.00, and accordingly, Debtor has no equity in the premises and the property is not necessary to an effective reorganization.

12. By reason of the foregoing, Movant is entitled to have the automatic stay lifted and vacated so it can recommence the mortgage foreclosure action pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: October 18, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Scott Erickson  
Julie Erickson

MEMORANDUM OF LAW

Debtor

Chapter 7, Case No. 04-35290  
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First Franklin Financial Corporation ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

**FACTS**

Movant holds a valid, perfected mortgage on real property owned by the Debtor. On the date of filing, the Debtor was delinquent under the note and mortgage. Since this case was filed Debtor has made no payments to Movant and the arrears total \$ 541.48.

**ARGUMENT**

1. Under Section 362.(d)(2) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." The Debtor in this case has failed to make payments required by the note and mortgage for a period of more than 2 months. Debtor has not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay. In Re: Video East, Inc., 41 B.R. 176 (Bkrtcy. E.D. Pa. 1984); In Re: Frascatore, 33 B.R. 687 (Bkrtcy. E.D. Pa. 1983).

2. Pursuant to §362(d)(2) of the Bankruptcy Code, relief from the stay is appropriate where Debtor has no equity and the property is not necessary to an effective reorganization. 11 U.S.C. §362(d)(2). See, In Re: Gellert, 55 B.R. 970 (Bkrtcy. D. N. H. 1983). In this case the balance due Movant is approximately \$31,300.00 and including the amount due the first mortgage holder, the approximate total amount encumbering the property is \$155,300.00. The value of the property is approximately \$150,000.00. Clearly, the Debtor has no equity in the property, and as this is a Chapter 7 case, the property is not necessary to an effective reorganization.

## **CONCLUSION**

Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1) for cause, where its interest in the secured property is not adequately protected. Movant is also entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(2) when Debtor has no equity, and when the property is not necessary to an effective reorganization.

Movant respectfully requests an Order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated: October 18, 2004

USSET & WEINGARDEN P.L.L.P

By:       /E/ Paul A. Weingarden/Brian H. Liebo        
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re: 15573231

Scott Erickson  
Julie Erickson

AFFIDAVIT OF PETITIONER

Debtor

Chapter 7, Case No. 04-35290  
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STATE OF California)

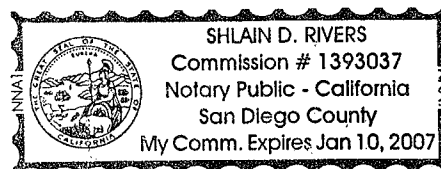
COUNTY OF San Diego )

Robin Williams, being first duly sworn, deposes and states on oath that she/he is employed by Chase Manhattan Mortgage Corporation, the movant in this action, that she/he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her/his knowledge to the best of her/his information.

Robin Williams

Subscribed and sworn to before me this  
11 day of Oct, 2004.

Shlain D. Rivers  
Notary Public



When recorded mail to:

2nd

2053738

~~First Franklin Financial Corporation~~  
~~2150 North First Street~~  
~~San Jose, CA 95131~~  
Loan number: 0030292189/5,521

71.30  
5.00  
DAKOTA COUNTY TREASURER-AUDITOR  
04/17/2003 10:33:29 765317  
REGISTRATION TAX  
COUNTY CONSERVATION FEE  
RECEIPT NUMBER 5642

## MORTGAGE

THIS MORTGAGE is made this 9th day of January, 2003,  
between the Mortgagor,  
Scott Erickson married to Julie Erickson

12533442-3  
Recording Requested by &  
When Recorded Return To:  
US Recordings, Inc.  
2925 Country Drive Ste 201  
St. Paul, MN 55117

RECEIVED

(herein "Borrower"), and the Mortgagee,

FEB 12 2003

DAKOTA COUNTY  
TREASURER-AUDITOR

**FIRST FRANKLIN FINANCIAL CORPORATION**  
existing under the laws of Delaware  
2150 North First St.,  
San Jose, CA 95131

, a corporation organized and  
, whose address is

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$ 31,000.00 (herein "Lender").  
indebtedness is evidenced by Borrower's note dated January 9, 2003, which  
thereof (herein "Note"), providing for monthly installments of principal and interest, with the balance of the  
indebtedness, if not sooner paid, due and payable on February 1, 2023 and extensions and renewals

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the  
payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this  
Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby

RECEIVED

MINNESOTA - SECOND MORTGAGE - 1/80 - FNMA/FHLMC UNIFORM INSTRUMENT

MAR 24 2003

DAKOTA COUNTY  
TREASURER-AUDITOR

VMP -76(MN) (9803)

Form 8824

Page 1 of 6

Initials: *[Signature]*

VMP MORTGAGE FORMS - (800)521-7236

Document # L074MN02



grant and convey to Lender, with power of sale, the following described property located in the County of  
Dakota, State of Minnesota:

Legal Description attached hereto and made a part hereof

Balloon Rider attached hereto and made a part hereof

Planned Unit Development Rider attached hereto and made a part hereof

Assessors Parcel Number: 107300103007

which has the address of 1491 Woodview Avenue East

Eagan

[Street]

[City]

Minnesota

55122

(herein "Property Address");

[ZIP Code]

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and late charges as provided in the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit development assessments, if any) which may attain priority over this Mortgage and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional lender.

If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Mortgage.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Legal Description:

Lot 3, Block 7 and Lot 2, Block 8, Surrey Heights 2nd Addition, Dakota County,  
Minnesota.



U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Scott Erickson  
Julie Erickson

Debtor

UNSWORN DECLARATION  
FOR PROOF OF SERVICE

Chapter 7, Case No. 04-35290  
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Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on October 18, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

John Hedback  
Chapter 7 Trustee  
2855 Anthony Lane S. #201  
St. Anthony, MN 55418

Robert J. Hoglund, Esq.  
Attorney at Law  
P.O. Box 130938  
Roseville, MN 55113

Scott Erickson  
Julie Erickson  
1491 Woodview Avenue East  
Eagan, MN 55122

/E/ Erin Kay Buss  
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Scott Erickson  
Julie Erickson

ORDER

Debtor.

Chapter 7, Case No. 04-35290  
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The above entitled matter came on for hearing upon motion of First Franklin Financial Corporation, ("Movant"), pursuant to 11 U.S.C. Section 362 on November 3, 2004, at the U.S. Bankruptcy Court, St. Paul, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED THAT:

The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors and/or assigns, has an interest, said property legally described as follows, to-wit:

Lot 3, Block 7 and Lot 2, Block 8, Surrey Heights 2nd Addition, Dakota County,  
Minnesota

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this \_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Judge of the Bankruptcy Court